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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,798	04/10/2001	Takao Daicho	109146	8412

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EXAMINER

PATTEN, PATRICIA A

ART UNIT	PAPER NUMBER
1654	13

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/828,798

Applicant(s)
Daicho, T.

Examiner
Patricia Patten

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1654



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 3, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, and 6-8 is/are pending in the application.
- 4a) Of the above, claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Claims 1, 3-4 and 6-8 are pending in the application.

This application contains claim 7 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claims 1, 3-4, 6 and 8 were examined on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found
in a prior Office action.

Claim Rejections - 35 USC § 112

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Specifically, claim 1 recites '10 to 1,000 mg' of cholic acid and "10 to 500' mg of isoflavones. These specific ranges were not found in the Instant specification and are thus considered New Matter. Applicant is asked to amend the claims in order to overcome the New Matter (i.e., inclusion of a range which was specifically recited in the Specification). It is noted however, that the claims were examined on the merits as they stand.

Claim Rejections - 35 USC § 103

Claims 1, 3-4 6 and 8 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Mach (US 4,487,766).

The teachings of Mach were discussed in the previous Office Action. To reiterate, Mach disclosed a 'breeding feed' which included ground soy beans (which inherently contained soy isoflavones), vitamins (A, D, E, K and B's) as well as cholic acid (Please see col.8, Table 1). With regard to 'crude drugs' being present in the composition; it is deemed that a number of the constituents in the composition proposed by Mach would have been 'crude drugs.' For example, green alfalfa flour is deemed to be a 'crude drug' since alfalfa is known to inherently possess pharmacologically active phytochemicals such as saponins (anti-inflammatory

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agents)(as seen in Table 1), and is considered 'crude' because the saponins were not fully purified.

Mach did not specifically teach the specific ranges as recited in the Instant claims.

One of ordinary skill in the art would have been motivated to have modified the proportions of the cholic acid and/or soy beans in the feed formulation disclosed by Mach et al. In order to have provided animals with varying degrees of nutritional ingredients. It was clear from Mach et al. that animal feeds such as soybean were advantageously combined with cholic acid to provide a nutritional meal for animals. Variations of the amounts within the composition would have merely been routine optimization of result effective variables which was well within the purview of the ordinary artisan. Further, it is noted that Applicant has not demonstrated any unexpected result with regard to the administration of cholic acid and isoflavones in the particularly claimed amounts. Because these ingredients were well known in the art to be used as feed material (although isoflavones were not specifically mentioned in Mach, it is known in the art that soy contains approximately 81.33 mg/100g soy) one of ordinary skill in the art would have been motivated to have combined them for the additive effect of their nutritional benefits.

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Claims 1 and 6 are newly rejected under 35 U.S.C. 103(a) as being unpatentable over Mach (US 4,487,766) in view of Ogawa (JP 57063057 A).

The teachings of Mach were discussed in the previous Office Action as well as *supra*. Mach did not specifically teach the incorporation of ginseng into the animal feed.

Ogawa (JP 57063057 A) disclosed a feed for cattle which incorporated ginseng, thereby giving the feed a 'growth promoting effect' (English Abstract).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit since each is well known in the art to be included in nutritional animal feeds to promote growth of the animals. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 1943 C.D. 518. Applicants invention is predicated on an unexpected result, which typically involves synergism, an unpredictable phenomenon, highly dependent upon specific proportions and/or amounts of particular ingredients. Any mixture of the components embraced by the claims which does not exhibit an unexpected result (e.g., synergism) is therefore obvious.

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Accordingly, the instant claims, in the range of proportions where no unexpected results are observed, would have been obvious to one of ordinary skill having the above cited references before him.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

A handwritten signature in black ink, consisting of a stylized 'C' and 'T' intertwined.

CHRISTOPHER R. TATE
PRIMARY EXAMINER